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No. 414.

In the Supreme Court of the United States

October Term, 1956.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA, A. F. L., DISTRICT NO. 2, *Petitioner*,

vs.

NATIONAL LABOR RELATIONS BOARD.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

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In the brief of the National Labor Relations Board in opposition (p. 11), in arguing that there is no conflict between *N. L. R. B.* v. *Del E. Webb Construction Co.*, 196 F. 2d 702, and the instant case, the court is asked to consider the subsequent decision of the United States Court of Ap-

peals for the Eighth Circuit in *N. L. R. B.* v. *International Union of Operating Engineers, Local No. 101*, 216 F. 2d 161. The latter case does not mention the *Del E. Webb* case either directly or indirectly. Neither expressly nor impliedly does it overrule the *Del E. Webb* case.

While both Eighth Circuit cases involved discrimination in favor of members of Local 101 of the Operating Engineers and against members of Local 101-B, the *Del E. Webb* case was based on the character of 101-B as composed of apprentices ineligible for membership in Local 101, whereas in the later case 101-B is described, not as an apprentice local, but as composed of persons fully experienced and eligible for membership in Local 101. There is not one word in the opinion of the later Eighth Circuit decision which suggests that if the facts there disclosed had been the same as those appearing in the *Del E. Webb* case that the Eighth Circuit would not have applied the rule stated in the *Del E. Webb* case. Indeed, in the later case the Eighth Circuit emphasizes the absence of any difference in experience and qualification between members of Local 101-B and Local 101 (216 F. 2d at pages 162, 163). The court also pointed out that the members of Local 101-B "so far as appears from the record" were fully qualified for membership in Local 101 (at page 164). The two members of Local 101-B specifically involved in the case had sought to transfer their membership to Local 101 and had never received any satisfactory explanation for the failure of Local 101 to accept them.

For the foregoing reasons we respectfully submit that the later Eighth Circuit decision does not remove the *Del E. Webb* case from its position as a conflicting decision by a sister circuit. (See Pet., pages 14-16.)

The National Labor Relations Board evades the issue here presented when it argues that the four complainants

had such experience in the building and construction industry as to qualify them for the jobs which they were denied (Pet., page 10).

The Board may believe they had the requisite experience. But neither the union nor the employer to whom they applied for jobs ever passed on whether they had the requisite experience, because though members of the Boilermakers, they refused to apply for membership in the local which would fix their classification as experienced or inexperienced. The Board's rule would exclude unions from any role in cooperating with employers to maintain standards of experience for employment. It will destroy the whole fabric of the Union, which is built on the Constitution (Subordinate Lodge Constitution, Article I, Sections 1 and 2) enabling the Union to furnish employers with the best fitted mechanics for the work for which they are called.

Respectfully submitted,

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October 11, 1956.